

1 Hon. David G. Estudillo  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TOMMY BROWN, on his own behalf and on ) Case No.: 2:20-cv-00680-DGE  
behalf of other similarly situated persons, )  
Plaintiffs, ) TRANSWORLD SYSTEMS INC.'S  
v. ) FED. R. CIV. P. 12(B)(6) MOTION TO  
) DISMISS PLAINTIFF'S FIRST  
) AMENDED COMPLAINT  
TRANSWORLD SYSTEMS INC.; ) Note on Motion Calendar:  
PATENAUME & FELIX, APC; U.S. BANK, ) Friday, June 17, 2022  
N.A.; NATIONAL COLLEGIATE ) ORAL ARGUMENT REQUESTED  
STUDENT LOAN TRUST 2004-1, )  
NATIONAL COLLEGIATE STUDENT )  
LOAN TRUST 2004-2, NATIONAL )  
COLLEGIATE STUDENT LOAN TRUST )  
2005-1, NATIONAL COLLEGIATE )  
STUDENT LOAN TRUST 2005-2, )  
NATIONAL COLLEGIATE STUDENT )  
LOAN TRUST 2005-3, NATIONAL )  
COLLEGIATE STUDENT LOAN TRUST )  
2006-1, NATIONAL COLLEGIATE )  
STUDENT LOAN TRUST 2006-2, )  
NATIONAL COLLEGIATE STUDENT )  
LOAN TRUST 2007-1, and NATIONAL )  
COLLEGIATE STUDENT LOAN TRUST )  
2007-2, )  
Defendants. )

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1                   Defendant, Transworld Systems Inc. (“TSI”), through counsel and pursuant to Fed. R. Civ.  
 2 P. 12(b)(6), respectfully moves to dismiss the First Amended Complaint (“FAC”) (Dkt. 104) filed  
 3 by plaintiff, Tommy Brown (“Brown” or “Plaintiff”).

4                   I. **INTRODUCTION**

5                   TSI is the post-default servicer and records custodian of student loans—including  
 6 Brown’s—owned by the Defendant Trusts.<sup>1</sup> Brown seeks to recover damages from TSI under the  
 7 Consumer Protection Act (“CPA”), RCW 19.86, the Collection Agency Act (“CAA”), RCW  
 8 19.16, and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, *et seq.*, and for  
 9 injunctive relief, all relating to TSI’s provision of custodial records affidavits to attorneys for the  
 10 Defendant Trusts who filed the affidavits in state court student loan collection actions against him.

11                   In sum, Brown claims he was sued on student loan debts that were unprovable. Brown’s  
 12 claims are not viable or well pled, and they should be dismissed. Specifically, Brown claims TSI  
 13 and the other defendants fraudulently conspired against him, *but* he has not alleged any conspiracy  
 14 with the required particularity. Brown claims TSI improperly collected interest and fees following  
 15 a violation of the CAA, *yet* he does not (and cannot) allege any such predicate violation and he  
 16 does not allege he ever paid TSI any such monies afterwards. Brown claims TSI was not properly  
 17 licensed as a student loan servicer, *but* his own allegations demonstrate TSI is exempt from those  
 18 licensing requirements. Brown asserts TSI violated the CPA, *however*—despite already amending  
 19 his complaint—he has *still* not alleged any injury to his business or property to support any such  
 20 claim or that TSI’s conduct caused such injury. And, except to contend TSI’s affiants falsely  
 21 alleged “personal knowledge” of his loans (which assertions do not violate the law, even if  
 22 inaccurate), he has not sufficiently alleged TSI engaged in any unfair or deceptive conduct against  
 23 him. Brown seeks an injunction from prospective debt collection on the subject loans, *even though*

24  
 25                   <sup>1</sup> The Defendant Trusts include the following nine Delaware Statutory Trusts: National Collegiate Student Loan Trust  
 26 2004-1, National Collegiate Student Loan Trust 2004-2, National Collegiate Student Loan Trust 2005-1, National  
 27 Collegiate Student Loan Trust 2005-2, National Collegiate Student Loan Trust 2005-3, National Collegiate Student  
 28 Loan Trust 2006-1, National Collegiate Student Loan Trust 2006-2, National Collegiate Student Loan Trust 2007-1,  
 29 and National Collegiate Student Loan Trust 2007-2. FAC ¶ 42.

1 his liability on the loans has already been adjudicated in his favor. And he contends his privacy  
 2 has been invaded, *but* he had no reasonable expectation of privacy regarding the subject student  
 3 loan debts he acknowledges he incurred but never paid, and, regardless, the ordinary forms of  
 4 collection marshalled against him (collection letters sent by a co-defendant, and collection suits  
 5 filed by another co-defendant) are not “highly offensive,” so as to support any invasion of privacy  
 6 claim. For all of these reasons, and as more fully set forth below, this Motion to Dismiss should  
 7 be granted and the FAC should be dismissed with prejudice.

8 **II. FACTUAL BACKGROUND & PROCEDURAL HISTORY**

9 Brown co-signed with his son 10 educational loans with Bank of America. FAC ¶¶ 36, 71.  
 10 Brown never made any payments on the loans. *Id.* ¶ 74.

11 In October 2018 (and again in January 2019), Brown received letters from the law firm  
 12 Patenaude & Felix, A.P.C. (“P&F”) regarding the outstanding balances on the loans due to the  
 13 Defendant Trusts. *Id.* ¶ 71 and 73.

14 In February 2019, Brown was served with 10 complaints alleging Brown was liable to the  
 15 Defendant Trusts on the loans. *Id.* ¶ 74. The Complaints were subsequently filed [in separate  
 16 cases] against Brown and his son in King County Superior Court on April 5, 2019. *Id.* ¶ 75.

17 Concurrent with each Complaint filing, the Defendant Trusts also filed an affidavit signed  
 18 by a TSI employee. *Id.* ¶ 79. Exhibits were attached to each affidavit, including the following: a  
 19 notice identifying U.S. Bank as special servicer and TSI as subservicer on behalf of the Trust(s);  
 20 a “Loan Request / Credit Agreement” signature page for a Bank of America loan signed by Brown  
 21 and his son along with a “Note Disclosure Statement; and a “Pool Supplement” (evidencing the  
 22 sale of a pool of loans from Bank of America to The National Collegiate Funding, LLC (“NCF”))  
 23 with a “Deposit and Sale Agreement” (evidencing the sale of a pool of loans from NCF to each  
 24 Trust). *Id.* ¶ 80. The full lists or “schedules” of loans in each pool were not identified in or  
 25 included with the affidavits. *Id.* ¶ 81.

26 The 10 separate collection actions were consolidated into one. *Id.* ¶ 75.  
 27

1           On September 20, 2019, Brown and his son moved for summary judgment. *Id.* ¶ 84.

2           The Trusts opposed the summary judgment motion and, with it, submitted the affidavit of  
3 another TSI employee, Bradley Luke. *Id.* ¶ 82. Attached to the Luke affidavit were redacted  
4 excerpts of the loan schedules, which supported Luke's statements that Brown's loans were  
5 included in the pool sales described above. *Id.* ¶ 83.

6           On December 24, 2019, the King County Superior Court declared the Luke affidavit was  
7 hearsay and inadmissible in evidence<sup>2</sup> and, solely because the evidence was not admitted, the court  
8 granted summary judgment in favor of Brown. *Id.* ¶ 85 and 86. The judgment is final. *Id.* ¶ 87.

9           On April 6, 2020, Brown filed his original Complaint against TSI and others in King  
10 County Superior Court. The matter was subsequently removed to the Western District of  
11 Washington in the above-captioned and numbered matter (Dkt. 1). Following the Court's denial  
12 of Brown's motion to remand (*see* Dkt. 91), and ensuing Rule 12(b)(6) motions on Brown's  
13 original Complaint (see Dkts. 94, 96, 98, and 100), Brown filed the FAC on March 22, 2022 (Dkt.  
14 104). This Motion to Dismiss is timely filed (*see* Dkt. 103, Stipulated Motion and Order to Set  
15 Case Schedule).

16           **III. MOTION TO DISMISS STANDARD**

17           To survive a motion under Fed. R. Civ. P. 12(b)(6), a complaint's "[f]actual allegations  
18 must be enough to raise a right to relief above the speculative level" and have "enough facts to  
19 state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545,  
20 547 (2007). A complaint will not suffice if it "tenders naked assertions devoid of further factual  
21 enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Mere legal conclusions 'are not  
22 entitled to the assumption of truth,'" and the complaint must contain more than "a formulaic  
23 recitation of the elements of a cause of action." *Dougherty v. City of Covina*, 654 F.3d 892, 897  
24 (9th Cir. 2011). "Nor is the court required to accept as true allegations that are merely conclusory,  
25

26           

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<sup>2</sup> The FAC implies the Luke affidavit was "struck" as improper. This accusation plainly contradicts the record in the  
27 consolidated state court collection action, of which this Court may take judicial notice. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (Judicial notice of public records is permissible on a motion to dismiss).

1 unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*,  
 2 266 F.3d 979, 988 (9th Cir. 2001).

#### 3 **IV. LAW AND ARGUMENT**

##### 4 **A. Brown Has Not Pled A Viable Civil Conspiracy Claim Against TSI (Count I)**

5 Brown contends Defendants conspired to violate the CPA. A claim for civil conspiracy  
 6 requires a plaintiff prove, “by clear, cogent and convincing evidence that (1) two or more people  
 7 combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by  
 8 unlawful means; and (2) the conspirators entered into an agreement to accomplish the object of  
 9 the conspiracy.” *Wilson v. State*, 84 Wn. App. 332, 350–51 (1996) (citing *Corbit v. J.I. Case Co.*,  
 10 70 Wn.2d 522, 528–29 (1967)).

11 Rather than specify the activity on which Brown’s civil conspiracy count is grounded, the  
 12 FAC employs the intentionally vague and cumbersome approach of incorporating all preceding  
 13 complaint allegations (or about 120 allegations, not including subparts) in support of this count.  
 14 This Court is critical of such shotgun pleadings whereby each count adopts the allegations of all  
 15 preceding counts, causing each successive count to carry all that came before it. *See, e.g., E.K. v.*  
 16 *NookFACK Valley Sch. Dist.*, 2021 WL 1531004, \*3 (W.D. Wash. Apr. 19, 2021). And where, as  
 17 here, a plaintiff’s allegations of impropriety involve alleged fraudulent conduct,<sup>3</sup> this is a  
 18 particularly convoluted and improper pleading strategy. *See, e.g., Wasco Prod., Inc. v. Southwall*  
 19 *Techs, Inc.*, 435 F.3d 989, 990 (9th Cir. 2006) (holding that under federal law a plaintiff must  
 20 plead, at a minimum, the basic elements of a civil conspiracy if the object of the conspiracy is  
 21 fraudulent); *see also* Fed. R. Civ. P. 9(b) (specifying that “[i]n alleging fraud . . . , a party must  
 22 state with particularity the circumstances constituting fraud”); *Leishman v. Washington Att’y*  
 23 *Gen.’s Off.*, 2021 WL 1140262, \*9–10 (W.D. Wash. Mar. 25, 2021) (holding conspiracy claims  
 24

25 \_\_\_\_\_  
 26 <sup>3</sup> See FAC ¶ 23–24, which implies TSI generally, but not specifically in connection with Brown’s loans  
 27 “manufactured” documents, ¶ 54, which alleges without any meaningful details that “TSI created false and forged  
 documents purporting to reflect the Loan Schedules” and ¶ 110(f), which alleges “Defendants” caused false or forged  
 evidence to be submitted in student loan collection actions.

1 sound in fraud and are thus subject to Rule 9(b)'s heightened pleading standard). In such cases,  
 2 “[a] complaint adequately alleges fraud if it informs the defendant of *who* did *what*, and *describes*  
 3 the fraudulent *conduct and mechanisms*.” *Kwai Ling Chan v. Chase Home Loans, Inc.*, 2012 WL  
 4 1576164, \*5 (W.D. Wash. May 4, 2012) (emphasis added). “The averments must include ‘the  
 5 who, what, when, where, and how’ of the misconduct charged.” *Leishman*, 2021 WL 1140262 at  
 6 \*9 (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003) (quoting *Cooper v.*  
 7 *Pickett*, 137 F.3d 616, 627 (9th Cir. 1997))).

8 As best as TSI can discern, Defendants’ alleged [fraudulent] conspiracy is premised on the  
 9 following core conduct undertaken against Brown: (1) P&F sent 10 separate collection letters that  
 10 were received by Brown (FAC ¶ 71); (2) the Trusts served (and then later filed) 10 separate  
 11 complaints against Brown (*Id.* ¶ 74, 75); (3) the Trusts “concurrently filed” in each case an affidavit  
 12 that was signed by a TSI employee (*Id.* ¶ 79); and (4) the Trusts “replaced” those affidavits in each  
 13 case with a new affidavit signed by another TSI employee.

14 Even assuming solely for purposes of this motion that any of the above conduct—P&F  
 15 sending letters; the Trusts serving/filing lawsuits; TSI executing affidavits<sup>4</sup>—was undertaken with  
 16 the unlawful object of collecting from Brown a debt which Defendants cannot prove he owes to  
 17 the Trusts, Brown’s conspiracy claim still fails as a matter of law because he has not alleged any  
 18 agreements by TSI and between the other Defendants, much less any concert of action between all  
 19 the parties working together understandingly, with a single design for the accomplishment of a  
 20 common unlawful purpose of achieving that unlawful object.

21 Instead, the FAC avers generally that an entity “[First Marblehead Corporation (“FMC”)]  
 22 came up with a “scheme” by which it would entice national banks to lend their charters to a  
 23 marketing operation to be conducted by FMC for the banks,” and, to that end, FMC entered into  
 24 “a series of management agreements” with another entity, The Education Resources Institute  
 25

26 \_\_\_\_\_  
 27 <sup>4</sup> Except for describing the contents of the TSI affidavits at issue, and parroting allegations that have been made against  
 TSI in other cases or regulatory proceedings, the FAC is devoid of any specific allegations of malfeasance by the  
 U.S. Bank, and P&F explicitly against Brown.

1 (“TERI”). FAC ¶¶ 3–4. But the FAC does not assert any conspiracy claims against FMC or  
 2 TERI, or otherwise allege how TSI (or any other Defendant) agreed to participate in FMC’s  
 3 supposed “scheme”.

4 Likewise, the FAC alleges “TSI was appointed as special sub-servicer of the [Defendant  
 5 Trusts],” (FAC ¶ 13) but does not state (much less explain with the required particularity) how that  
 6 appointment was made, by whom it was made, which of the other Defendants, if any, participated  
 7 in the decision to make that appointment, and whether and how it was made for the purpose of  
 8 achieving unlawful debt collection from Brown through the fabrication of proofs.

9 The FAC also alleges “TSI retains a national network of law firms and attorneys,” one of  
 10 whom is Defendant P&F, but it does not articulate whether and how any such agreement with P&F  
 11 was reached to accomplish unlawful collection activities, and whether, for example, by operation  
 12 of that retention, TSI was somehow involved, participated in, or responsible for P&F sending its  
 13 collection letters to Plaintiff.

14 At bottom, Brown asserts a nefarious scheme involving non-party entities or else mentions  
 15 a smattering of benign business instruments, which roughly outline the relationships between the  
 16 named Defendants without delineating “the who, what, when, where, and how” any agreements  
 17 between the named Defendants created or fostered any conspiracy to fabricate evidence against  
 18 Brown in support of the Trusts’ collection actions. In fact, some allegations in the FAC actually  
 19 disprove any potential conspiratorial agreements. For example, the FAC incorporates allegations  
 20 that were raised by owners of a beneficial interest in the Trusts purportedly on behalf of the  
 21 Defendant Trusts in certain Delaware Chancery Court litigation against TSI, for damages resulting  
 22 from allegedly bringing suit against Trust debtors without sufficient proof of the debtors’ loans in  
 23 certain cases. *See* FAC ¶ 96. These allegations—incorporated into and relied upon in the FAC—  
 24 affirmatively denounce any purported conspiracy between TSI and the Trusts or any other  
 25 Defendant for that matter. Where the “pleadings internally contradict verifiable facts central to [a

1 plaintiff's] claims, that makes [the plaintiff's] allegations implausible." *Bailey v. City of Ann*  
 2 *Arbor*, 860 F.3d 382, 387 (6th Cir. 2017).

3 Brown's allegation of conspiratorial agreement between TSI and U.S. Bank is even more  
 4 tenuous. The FAC alleges simply that "U.S. Bank agreed to be the Special Servicer of the Trusts  
 5 and to be responsible for collection of debts allegedly owed to the Trusts." But this abstract  
 6 allegation does not inform any alleged conspiratorial agreement with TSI or any other defendant  
 7 in the slightest. Is TSI a party to that agreement? What about the other defendants? Do any  
 8 agreements acknowledge loan documentation is missing or authorize any parties to re-construct  
 9 missing loan documentation? The FAC simply does not say.

10 In view of all of the foregoing, Count I of the FAC should be dismissed.<sup>5</sup>

11 **B. Brown Fails To State A Claim For Violation Of The CAA Against TSI (Count II)**

12 In Count II, Brown avers TSI violated the CAA in two respects: first, by collecting interest  
 13 and fees following the purported commission of "acts prohibited by RCW 19.16.250" in violation  
 14 of RCW 19.16.450, and, second, by undertaking student loan servicing without first obtaining a  
 15 license as a student education loan servicer they contend is required under the Consumer Loan Act  
 16 ("CLA"), RCW 31.04.015. *See* FAC ¶¶ 133 & 135.

17 The first averment is not well pled and the second is baseless.

18 At the outset, any contention that TSI improperly collected fees and interest from Brown  
 19 is nonsensical because Brown specifically admits "he had never made any payment on the loans"  
 20 by the time he was served with the state court collection lawsuits, and he subsequently prevailed  
 21 against the Trusts on those collection claims. FAC ¶¶ 74 & 85.

22  
 23  
 24 <sup>5</sup> Moreover, to the extent each and every claim for relief lacks legal merit, as shown below, Brown's conspiracy claims  
 25 likewise fail. "A conspiracy claim fails if the underlying act or claim is not actionable." *Nw. Laborers-Employers*  
*Health & Sec. Tr. Fund v. Philip Morris, Inc.*, 58 F. Supp. 2d 1211, 1216 (W.D. Wash. 1999). "[A] civil conspiracy  
 26 claim cannot exist independently — it must be based on a separate underlying claim of wrongdoing. *Wilson v.*  
*JPMorgan Chase, N.A.*, 2020 WL 885971, \*5 (W.D. Wash. Feb. 24, 2020), *reconsideration denied*, 2020 WL 6262106  
 27 (W.D. Wash. Oct. 23, 2020).

1        The claim is otherwise ill pled. As with Count I (and all other counts), the FAC’s treatment  
 2 of Count II merely “incorporates all preceding paragraphs as if set forth fully herein,” and,  
 3 similarly, avers that “Transworld [has] engaged in acts prohibited by the [CAA], as more  
 4 particularly set forth above.” On the basis of those vague cross-references to any and all of the  
 5 FAC’s factual allegations *en masse*, the FAC concludes Defendants have collected interest and  
 6 fees in violation of RCW 19.16.450 following the commission of acts prohibited by some  
 7 provision of RCW 19.16.250, which the FAC also fails to specify.

8        Brown’s failure to specify the factual basis for his CAA-violation claim in any meaningful  
 9 way, or otherwise identify which of the 29 “prohibited practices” specified in RCW 19.16.250  
 10 applies, dooms Count II. Nevertheless, if this Court is inclined to entertain any suggestion of a  
 11 violation of RCW 19.16.450 in the absence of any specifically alleged predicate act, the Court  
 12 might be tempted to venture that Subsection 16—“the threat to take any action against the debtor  
 13 which the licensee cannot legally take at the time the threat is made”—may conceivably apply. It  
 14 does not. As this Court previously held in rejecting a motion to dismiss a similar contention in  
 15 another matter (also prosecuted by the same plaintiffs’ counsel herein), “the Court is not aware of  
 16 [] a case applying [RCW 19.16.250(16)] to unlawful actions to collect debts, as opposed to threats  
 17 to take such action.” *Hoffman v. Transworld Sys. Inc.*, 2018 WL 5734641, \*9 (W.D. Wash. Nov.  
 18 2, 2018), *aff’d in part, rev’d in part*, 806 F. App’x 549 (9th Cir. 2020). As in that case, the  
 19 allegations here likewise concern the actual filing of lawsuits, not the threat to take such action  
 20 and, as such, fail to assert a predicate act giving rise to any potential violation of RCW 19.16.450.

21        As for Brown’s contention that TSI has serviced student education loans without a “student  
 22 loan servicer license” under the CLA (which, he avers, is declared an unlawful practice of the  
 23 CAA, per RCW 19.16.440), that claim fails as a matter of law. The agency charged with  
 24 administering and interpreting the CLA, the Department of Financial Institutions, has adopted  
 25 regulations deeming the term “student education loan servicer” does *not* include collection  
 26 agencies licensed in Washington under RCW 19.16 *et seq.*, when such agencies are engaged in the  
 27

1 activity of collecting student education loans in default. Wash. Admin. Code 208-620-011(14).  
 2 Both of those conditions for exempting TSI from the licensing requirements of the CLA are met.  
 3 Specifically, the FAC alleges TSI is licensed as a collection agency. *See* FAC ¶ 39(d). And, as  
 4 the FAC makes clear, “TSI’s only involvement with the [Defendant] Trusts began well after the  
 5 loans were made and after default[.]” *Id.* ¶ 15.<sup>6</sup> Because TSI is alleged to be licensed as a  
 6 collection agency and to have serviced student loans post-default, Brown’s CAA claim based on  
 7 any allegation that TSI is not licensed as a “student education loan servicer” under the CLA fails  
 8 as a matter of law and must be dismissed based on Brown’s own allegations.

9 **C. Brown’s Claims Against TSI For A “Stand-Alone” Violation Of The CPA (Count  
 10 III) And A “*Per Se*” Violation Of The CPA (Count IV) Must Be Dismissed**

11 To establish a “stand-alone” private CPA claim (*i.e.*, one that is not premised on a violation  
 12 of statutes which contain a specific legislative declaration of public interest impact, per RCW  
 13 19.86.093(2)), five elements must be established: “(1) [an] unfair or deceptive act or practice; (2)  
 14 occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her  
 15 business or property; (5) causation.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins.*  
 16 *Co.*, 105 Wn.2d 778, 780 (1986). When, however, a CPA claim is predicated upon a *per se*  
 17 violation of statute, an act or practice that has the capacity to deceive substantial portions of the  
 18 public, or an unfair or deceptive act or practice not regulated by statute but in violation of public  
 19 interest—*i.e.*, “*per se* violations of the CPA”—the first 2 or 3 *Hangman Ridge* elements are met.  
 20 *See Panag v. Farmers Ins. Co. of Washington*, 166 Wash. 2d 27, 53 (2009); *see also Wright v.*  
 21 *Quality Loan Serv. Corp of Washington*, 2017 WL 3623763, \*6 (E.D. Wash. Apr. 18, 2017). Thus,  
 22 whether a “stand alone” or “*per se*” CPA claim is asserted, causal injury to the plaintiff’s business  
 23 or property is always required.

24

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25 <sup>6</sup> *See also* ¶ 14 (“As Special Subservicer, TSI oversees the collection of student loans purportedly owned by the Trusts  
 26 that go *into default*[;]” and ¶ 68 (“TSI becomes the default [*i.e.*, preselected] student loan servicer for the loan accounts  
 27 at issue here and the loan accounts of certain of the putative class members at a time when it believed the loans were  
 in *default*.”) (emphasis added).

1           As established below, Brown fails to allege an injury to his business or property caused by  
 2 any conduct of TSI, which is fatal to Brown's CPA claims in Counts III and IV. Brown's CPA  
 3 claims also fail because he has not alleged that TSI falsified any documents in the state court  
 4 collection actions filed against him, and, otherwise, because the assertions of "personal  
 5 knowledge" contained in the affidavits that were filed in those state court collection cases—even  
 6 if erroneous—do not violate the predicate FDCPA statute upon which Brown's *per se* CPA claim  
 7 is founded.<sup>7</sup>

8           1.       *The FAC Does Not Plausibly Allege TSI's Conduct Caused Any Injury*

9           To be actionable under the CPA, a deceptive act or practice must have "proximately  
 10 caused" injury to the plaintiff's "business or property." *Panag*, 204 P.3d at 902. "The focus in  
 11 the legal causation analysis is whether, as a matter of policy, the connection between the ultimate  
 12 result and the act of the defendant is too remote or insubstantial to impose liability" and is an issue  
 13 of law. *Lundquist v. First Nat'l Ins. Co. of Am.*, 2020 WL 5847590, \*6 (W.D. Wash. Oct. 1, 2020)  
 14 (quoting *Michaels v. CH2M Hill, Inc.*, 171 Wn.2d 587, 611 (2011)). Further, a plaintiff must also  
 15 show that "but for the defendant's unfair or deceptive practice, the plaintiff would not have  
 16 suffered an injury." *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*,  
 17 162 Wn.2d 59, 83 (2007) (quoting RCW 19.86.020); *see also Carlile v. Harbour Homes, Inc.*, 147  
 18 Wn. App. 193, 214–215 (2008).

19           Here, the FAC does not allege TSI's affidavits caused injury to Brown's property or  
 20 business. Again, as with all other counts, Brown first incorporates without specificity all of the  
 21 preceding paragraphs of the FAC. With respect to his stand-alone CPA claim, Brown asserts that,  
 22 "[s]uch conduct has damaged the Plaintiff by without limitation, making him unable to manage  
 23 his finances and causing him to incur out of pocket expenses to determine his legal rights and  
 24 responsibilities which caused loss of time away from his [unspecified] business." FAC ¶ 140.  
 25 And he concludes with respect to his *per se* CPA claim that "Defendants TSI and P&Fs' conduct

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27           <sup>7</sup> TSI agrees for purposes of this motion that a violation of the FDCPA may constitute a *per se* violation of the CPA.

1 in violation of the CPA has proximately caused and continues to cause injury to Plaintiff . . . in  
 2 [his] business or property.” *Id.* ¶ 155. These are conclusory and factually insufficient allegations  
 3 of injury and causation.

4 If any conduct of TSI truly impacted Brown’s cognitive ability or capacity to manage his  
 5 financial affairs, factual allegations supporting that conclusion have simply not been pled and,  
 6 regardless, does not constitute an injury to business or property. And as for Brown’s allegation  
 7 that he incurred unidentified and uncategorized “out of pocket expenses” (a legal conclusion in  
 8 itself), he has not even alleged how TSI’s conduct caused Brown to incur them. In other words,  
 9 Brown has not alleged how he would have acted any differently if TSI’s affidavits containing any  
 10 alleged false representations had not been filed. The facts are that Brown was sued; he successfully  
 11 defended the consolidated state court collection actions; and he won the case without ever making  
 12 any payments on the loans. Whether the affidavits were filed (or not), what is the resulting,  
 13 consequential injury to Brown’s business or property? The FAC does not (and cannot) say.

14 In addressing similar, vacuous allegations of injury made in another complaint the same  
 15 opposing counsel filed against TSI in another matter, the Ninth Circuit required plaintiffs “to  
 16 address whether [the plaintiffs] have paid money to the Defendants and thus incurred an injury as  
 17 a result of the default judgment obtained through the allegedly false affidavits.” *Hoffman v.*  
 18 *Transworld Sys., Inc.*, 806 F. App’x 549, 553 (9th Cir. 2020) (designated not for publication).  
 19 Brown can *never* conceivably make such an allegation in this case that would satisfy the Ninth  
 20 Circuit’s requirement, for Brown specifically alleges that “he had never made any payment on the  
 21 loans” by the time he was served with the state court collection lawsuits, and he subsequently  
 22 prevailed against the Trusts on those collection claims. FAC ¶¶ 74 & 85.

23       2.     *The FAC Fails To Allege An Unfair Or Deceptive Act By TSI*

24       Brown contends TSI committed unfair or deceptive acts in violation of the FDCPA (thus  
 25 giving rise to a *per se* violation of the CPA) in either of two ways: by falsifying, forging, or  
 26 fabricating loan documents (*see, e.g.*, FAC ¶ 23 & 24, and 103) or else by making false assertions  
 27

1 of “personal knowledge” in affidavits filed in Trust loan collection cases (*see, e.g.*, FAC ¶ 18, 52,  
 2 & 54).<sup>8</sup> Neither of these allegations is viable.

3 In particular, the FAC contains no explicit allegation that TSI falsified Brown’s loan  
 4 documents. To be clear, and with respect to the TSI affidavits concurrently filed with the state  
 5 court collection complaints, the FAC alleges only that loan schedules pertaining to Brown’s loans  
 6 were not attached. And with respect to the Luke affidavit, which likewise did not attach the loan  
 7 schedules pertaining to Brown’s loans and merely attached excerpts of the schedules, Brown has  
 8 not alleged that the excerpts (or the loan information contained therein) were falsified.

9 Brown’s allegations regarding the “personal knowledge” representations contained in the  
 10 affidavits also are defective. Affidavit (mis)representations of “personal knowledge,” without  
 11 more, generally do *not* give rise to viable FDCPA claims. Simply stated, “[a]n affiant’s assertion,  
 12 by itself, that he has personal knowledge based on business records is not a violation of the  
 13 FDCPA.” *Clark v. Main Street Acquisition Corp.*, 2013 WL 2295879, \*4 (S.D. Ohio May 24,  
 14 2013) (citing *Manlapaz v. Unifund*, 2009 WL 3015166, \*5 (N.D. Ill. Sept. 15, 2009) (“the falsity  
 15 of [the affiant’s] statement that she had personal knowledge of facts that she gleaned from a review  
 16 of business records is a technicality which would not mislead the unsophisticated consumer”)); *see*  
 17 also *Shetiwy v. Midland Credit Management*, 15 F.Supp.3d 437, 446–447 (S.D. N.Y. 2014)  
 18 (recognizing that affidavits purportedly filed without “personal knowledge” of the underlying debt  
 19 but which did not otherwise mislead the putative debtor as to the nature or legal status of the  
 20 underlying debt or impede a consumer’s ability to respond to or dispute collection, do not violate  
 21 the FDCPA). Affidavits falsely asserting personal knowledge concern deficiencies relating to state  
 22  
 23  
 24

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25 <sup>8</sup> Whether conduct violates the FDCPA is an objective test that is determined as a matter of law on a motion to dismiss  
 26 under Rule 12(b)(6). *See Toureman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1117–18 (9th Cir. 2014), *as amended*  
 27 *on denial of reh’g and reh’g en banc* (Oct. 31, 2014). Under the FDCPA, debt collectors are prohibited from “making  
 false representations of the character, amount, or legal status of any debt,” 15 U.S.C. § 1692e(a)(5), and the “use of  
 any false representation or deceptive means to collect or attempt to collect any debt.” 15 U.S.C. § 1692e(10). The  
 FDCPA also prohibits “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.

1 court pleading requirements rather than the overarching policy concerns behind the FDCPA. *See*  
 2 *Rosales v. Unifund CCR Partners*, 2008 WL 5156681, \*2 (N.D. Ill. Dec. 5, 2008).

3        Regardless, the statement that an affiant possesses personal knowledge is, at best, a  
 4 statement of opinion or a representation of law. *See Bank of New York Mellon as Tr. for*  
 5 *Certificateholders of CWMBS, Inc, CHL Mortg. Pass-Through Tr. 2007-15 Mortg. Pass-Through*  
 6 *Certificates, Series 2007-15 v. Stabenow*, 812 F. App'x 604, 605 (9th Cir. 2020) ("[P]ersonal  
 7 knowledge includes opinions and inferences grounded in observations and experience."). To the  
 8 extent any affiants' statements regarding their personal knowledge imparts an opinion about  
 9 admissibility of their testimony under the rules of evidence, they are quasi-legal opinions.  
 10 However, "[a] representation of law is not actionably false every time it turns out wrong." *Van*  
 11 *Hoven v. Buckles & Buckles, P.L.C.*, 947 F.3d 889 (6th Cir. Jan. 16, 2020). "[L]egal contentions  
 12 must be objectively baseless, not just later proved wrong, to be actionable" under the FDCPA. *Id.*  
 13 at 896; *see also Hemmingsen v. Messerli & Kramer, P.A.*, 674 F.3d 814, 819 (8th Cir. 2012) ("it  
 14 was not false or misleading [for a law firm debt collector] to submit a client affidavit and legal  
 15 memorandum arguing [defendant's] legal position" even though "a state court judge rejected the  
 16 contention."). This comports with CPA case law, which recognizes that a CPA claim cannot be  
 17 based on a "good faith mistake." *Griffin v. Allstate Ins. Co.*, 108 Wn. App. 133, 143–44 (2007);  
 18 *see also Coventry Assocs. v. Am. States. Ins. Co.*, 136 Wn.2d 269, 280 (1998). "Acts performed  
 19 in good faith under an arguable interpretation of existing law do not constitute unfair conduct  
 20 violative of the consumer protection law." *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d  
 21 133, 155 (1997).

22        Yet plaintiff has not alleged any affiant's statements of opinion as to their personal  
 23 knowledge of the facts to which they attested are objectively unreasonable. At most, the affidavits  
 24 purport to assert an opinion of personal knowledge to establish the admissibility into evidence of  
 25 the documents attached.

1       Further, insofar as the alleged conduct does not meet the lower threshold of liability under  
 2 the FDCPA, this Court may conclude the alleged conduct likewise does not constitute a violation  
 3 under a non-strict liability statute like the CPA. *Wright v. Quality Loan Serv. Corp of Washington*,  
 4 2017 WL 3623763, \*6 (E.D. Wash. Apr. 18, 2017) (courts have discretion to determine whether  
 5 an action is unfair or deceptive).

6 **D. Brown's Demand For Injunctive Relief (Count V) Must Be Dismissed Because There  
 7 Are No Conceivable Future Collection Efforts To Enjoin**

8       Brown seeks to enjoin TSI from recovering the Defendant Trusts' loans in Washington  
 9 through state court collection litigation. FAC, Count V. However, there is no actual controversy  
 10 between Brown and TSI relating to the student loans at issue, and, hence, nothing to enjoin,  
 11 because 1) the state court judgments resolved in Brown's favor any issues regarding his liability  
 12 on the loans and precludes any further collection attempts on the loans, and 2) Brown does not and  
 13 cannot allege TSI has attempted or undertaken ongoing collection of any of the loans that have  
 14 been adjudicated in Brown's favor. Brown's injunctive relief claim against TSI (and, indeed, all  
 15 the Defendants) must be dismissed.

16 **E. Brown's Claim For Invasion Of Privacy (Count VI) Must Be Dismissed**

17       “Washington recognizes a claim for invasion of privacy under the common law.”  
 18 *Daviscourt v. United States*, 2020 WL 8273956, \*8 (W.D. Wash. Nov. 10, 2020), *report and  
 19 recommendation adopted*, 2021 WL 22111 (W.D. Wash. Jan. 4, 2021) (citing *Reid v. Pierce  
 20 County*, 136 Wn.2d 195, 206 (1998) (citing the Restatement (Second) of Torts). “To establish an  
 21 invasion of privacy claim, a plaintiff must prove the following elements: (1) ‘[A]n intentional  
 22 intrusion, physically or otherwise, upon the solitude or seclusion of plaintiff, or his private affairs;’  
 23 (2) ‘[W]ith respect to the matter or affair which plaintiff claims was invaded, that plaintiff had a  
 24 legitimate and reasonable expectation of privacy;’ (3) ‘[T]he intrusion would be highly offensive  
 25 to a reasonable person; and’ (4) ‘[T]hat the defendant’s conduct was a proximate cause of damage  
 26 to the plaintiff.’” *Id.* (quoting *Doe v. Gonzaga Univ.*, 143 Wn.2d 687, 705-706 (2001), *reversed*

1       on other grounds, 536 U.S. 273 (2002) (referencing Restatement (Second) of Torts § 652B  
 2 (1977)).

3           Brown's contention that he had a reasonable expectation that his privacy would not be  
 4 intruded upon regarding the subject student loan debts fails on the pleadings. Notably, TSI is not  
 5 alleged to have authored the pre-suit demand letters or lawsuits that are alleged to have intruded  
 6 on his privacy. *See* FAC ¶¶ 71, 74 & 75 (alleging P&F sent letters and the Defendant Trusts served  
 7 and filed the lawsuits). Regardless, such activities were reasonably anticipated and, indeed, likely  
 8 and expected where, as here, Brown acknowledges he co-signed for the subject student loans but  
 9 never made a single payment on them. FAC ¶¶ 36 & 74. Brown could have no expectation of  
 10 privacy regarding the subject indebtedness under these circumstances, and his invasion of privacy  
 11 claim fails accordingly.

12           Brown also contends the "demand letters and lawsuits" were "highly offensive." *See* FAC  
 13 ¶¶ 166, 167. To the contrary, such activities are ordinary debt collection activities, which creditors  
 14 and debt collectors generally have a right to pursue. *See, e.g., Silver v. Dystrup-Chiang*, 2022 WL  
 15 741903, \*2 (W.D. Wash. Mar. 11, 2022) (simple wage garnishment not "unreasonable collection  
 16 effort"); *Piland v. Nationstar Mortg., LLC*, 2013 WL 593790, \*4 (W.D. Wash. Feb. 15, 2013)  
 17 (holding "retaining a collection law firm, pulling Plaintiff's credit report, and repeatedly sending  
 18 payment demands" is not highly offensive). The FAC side-steps this reality and suggests that the  
 19 otherwise benign conduct at issue—sending letters and filing suits—became "highly offensive"  
 20 where those activities were conducted with "knowledge that [Defendants] did not have any  
 21 legitimate legal claims" on the loans. FAC ¶ 167.

22           Plaintiff is mistaken for at least three reasons. First, any legal conclusion that any student  
 23 loan collection claim against him was illegitimate is just that—a legal conclusion—masquerading  
 24 as factual assertion, which this Court need not consider or adopt on a motion to dismiss. *Nat'l City*  
 25 *Bank, N.A. v. Republic Mortg. Home Loans, LLC*, 2010 WL 959925, \*1 (W.D. Wash. Mar. 12,  
 26 2010) ("The Court need not ... accept as true legal conclusions masquerading as factual  
 27

1 allegations.”); *see also Caruso v. Washington State Bar Ass’n*, 2017 WL 1957077, \*3 (W.D. Wash.  
 2 May 11, 2017) (applying *Twombly* standard to reject plaintiff’s argument based on legal  
 3 conclusion couched as fact).

4 Second, and relatedly, while Brown avers Defendants knew the collection claims were  
 5 illegitimate, that conclusion is not supported by any facts. To be precise, the balance of the FAC  
 6 outlines only the fallacy that evidence supporting the claims was fabricated to replace lost  
 7 documents and, consequently un-provable, *not* that the loans themselves were illegitimate.<sup>9</sup> As  
 8 the FAC plainly alleges, “[i]n sum, Defendants’ conduct amounts to an effort to lead consumers  
 9 and the courts to believe that the Defendants have the right to collect consumer debts when they  
 10 cannot show a satisfactory factual basis for their claims,” (FAC ¶ 2), and that “TSI [was] aware  
 11 that [it] lacked the ability to prove [] ownership of any loans taken out by . . . Tommy Brown[.]”  
 12 (FAC ¶ 101).

13 And, finally, but perhaps more importantly, the FAC’s conclusions regarding the purported  
 14 “highly offensive” nature of the intrusion confuses the conduct at issue (here, sending letters and  
 15 filing lawsuits), with a scienter component which is not supported by Washington case law.  
 16 Viewing objectively the conduct of sending of letters and filing of lawsuits, the Court should  
 17 conclude the mere sending of 10 letters (a separate one for each loan) and filing of 10 lawsuits (a  
 18 separate one for each loan) fails to allege conduct that would be highly offensive to a reasonable  
 19 person and dismiss Brown’s invasion of privacy claim.

20 **V. CONCLUSION**

21 For all of the foregoing reasons, the FAC fails to state a claim against TSI and,  
 22 consequently, should be dismissed with prejudice.

23 Dated: April 26, 2022 By: /s/ Justin H. Homes

24  
 25 <sup>9</sup> And, to be sure, the schedules are most certainly not “missing” or ever “lost.” TSI is fully prepared to submit the  
 26 loan schedules to the Court for *in camera* inspection immediately upon the Court’s request. The schedules are  
 27 voluminous and contain sensitive information about thousands of individual student loan borrowers in Washington  
 and throughout the country, but they will quickly show the Court two very important things: first, the schedules do,  
 in fact, exist and Brown has made false allegations; and second, Brown’s loans are undisputedly included on them.

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21 *Attorneys for Defendant Transworld Systems Inc.*  
22

23 **CERTIFICATE OF SERVICE**  
24

25 I hereby certify under the penalty of perjury under the laws of the United States that on the  
26 date below I electronically filed with the Clerk of Court the foregoing Transworld Systems Inc.'s  
27 Fed. R. Civ. P. 12(b)(6) Motion to Dismiss Plaintiff's First AMENDED COMPLAINT using the  
Court's Case Management/Electronic Case Filing System, which will send notification of such  
filing to all counsel of record.

28 Dated: April 26, 2022 By: /s/ Justin H. Homes  
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